



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 14 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard C. Kelly
Chairman, President & CEO
Xcel Energy, Inc.
800 Nicollet Mall
Minneapolis, Minnesota 55402

RE: Notice and Finding of Violation issued to Xcel Energy

Dear Mr. Kelly:

The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Xcel Energy, Inc./NSP-Minnesota (Xcel). This NOV/FOV is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

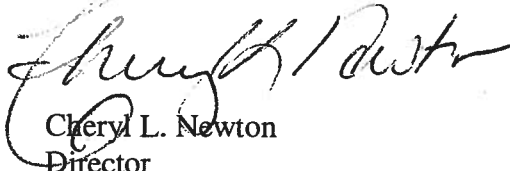
EPA has determined that Xcel is violating the Prevention of Significant Deterioration requirements under Section 165 of the Act, 42 U.S.C. § 7475 and the Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 – 7661e at the Sherburne County and Black Dog Generating Stations located in Becker and Burnsville, Minnesota, respectively.

EPA is offering Xcel an opportunity to confer with us about the violations cited in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Natalie Topinka. You may call her at (312) 886-3853, to request a conference. You should make your request for a conference no later than 10

calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Lewis G. Giesking
President, Board of Directors
Southern Minnesota Municipal Power Agency
500 First Avenue SW
Rochester, Minnesota 55902-3303

Jeff T. Connell, Manager
Compliance and Enforcement Section
Industrial Division
Minnesota Pollution Control Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Xcel Energy, Inc.

**Northern States Power Company –
Minnesota**

Minneapolis, Minnesota

**Proceedings Pursuant to
Section 113(a)(1) and (a)(3) of the
Clean Air Act, and 42 U.S.C.
§7413(a)(1) and (a)(3)**

EPA-5-11-MN-04

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Xcel Energy, Inc. and Northern States Power Company—Minnesota (collectively referred to as Xcel) for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401 *et seq.*, at the Sherburne County and Black Dog Generating Stations, located in Becker and Burnsville, Minnesota, respectively. From 2003 to the present, Xcel and its co-owners/ predecessors have modified and operated the electric utility steam generating units identified below without installing pollution control equipment able to achieve the Best Available Control Technology (BACT) as would be required under a PSD permit. Thus, these violations of the CAA and Minnesota State Implementation Plan have resulted in significant net emission increases of nitrogen oxides (NO_x), sulfur dioxide (SO₂), and/or particulate matter (PM) having been and still being released into the environment.

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of U.S. EPA Region 5, and redelegated to the Director, Air and Radiation Division.

STATUTORY AND REGULATORY BACKGROUND

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b) of the Act, 42 U.S.C. § 7401(b)(1)

The National Ambient Air Quality Standards

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate a national ambient air quality standard (NAAQS) to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified sulfur dioxide (SO₂), nitrogen oxides (NO_x), ozone and particulate matter (PM) as criteria pollutants, and has promulgated NAAQS for such pollutants. 40 C.F.R. Part 50.

4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.

5. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.

Prevention of Significant Deterioration

6. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the “PSD program.”

7. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (BACT) for each pollutant subject to regulation under the Act that is emitted from the facility.

8. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million BTUs per hour heat

input which emit or have the potential to emit one hundred tons per year or more of any pollutant to be “major emitting facilities.”

9. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

10. Sections 110(a) and 161 of the Act, 42 U.S.C. § § 7410(a) and 7471, require each state to adopt a state implementation plan (SIP) that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

11. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. § 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, and approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA as part of its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

12. EPA incorporated the provisions of 40 C.F.R. § 52.21 into the Minnesota State Implementation Plan (SIP) at 40 C.F.R. § 52.1234. 45 FR 52741 (Aug. 7, 1980) as amended by 60 Fed. Reg. 27413 (May 24, 1995), 68 Fed. Reg. 11323 (March 10, 2003) and 68 Fed. Reg. 74489 (Dec. 24, 2003). All citations to the PSD regulations herein refer to the provisions of 40 C.F.R. § 52.21 incorporated into and part of the Minnesota SIP as applicable at the time of the major modification alleged herein. EPA delegated to the Minnesota Pollution Control Agency (MPCA) the authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9580 (Jan. 29, 1981), as amended November 3, 1988.

13. The PSD regulations set forth in 40 C.F.R. § 52.21 (j) through (r) apply to any “major stationary source” that intends to construct a “major modification” in an area designated as attainment or unclassifiable. 40 C.F.R. § 52.21(a)(2)(i) and (ii).

14. Under the PSD regulations, “major stationary source” is defined to include any stationary source of air pollutants which emits or has the potential to emit 100 tons per year or more of any regulated NSR pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

15. Under the PSD regulations, “major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

16. Under the PSD regulations, “net emissions increase” means the amount by which the sum of the following exceeds zero: “[t]he increase in actual emissions from a particular physical change or change in method of operation at a stationary source” and “[a]ny other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i).

17. Under the PSD regulations, a “significant” net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of NO_x, 40 tons per year of SO₂, 25 tons per year of PM and 15 tons per year of PM₁₀. 40 C.F.R. § 52.21(b)(23)(i).

18. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which the unit “actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operations.” 40 C.F.R. § 52.21(b)(21)(ii).

19. Under the PSD regulations, “construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit)” that “would result in a change in actual emissions.” 40 C.F.R. § 52.21(b)(8); *see also* 42 U.S.C. § 7479(2)(C) (“construction” includes the “modification” (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)) of any source of facility).

20. A major stationary source subject to the requirements of paragraphs (j) through (r) must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process. 40 C.F.R. § 52.21(j)-(r).

21. No major stationary source to which the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply shall begin actual construction of a major modification without a permit which states that the stationary source or modification will meet those requirements (a “PSD permit”). 40 C.F.R. § 52.21(a)(iii) .

22. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who constructs or operates a source not in accordance with a PSD application or commences construction without applying for and receiving approval there under is subject to an enforcement action. 40 C.F.R. § 52.21(r)(1).

Title V Requirements

23. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no major source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. A major source under Section 501(2) of the Act is, among other things, a major stationary source which emits or has the potential to emit 100 tons per year or more of any air pollutant. EPA first

promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg. 32295*; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See 61 Fed. Reg. 34228*; 40 C.F.R. Part 71.

24. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate and complete application for a permit, including information required to be submitted with the application.

25. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. §7661c(a).

26. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also* Minnesota Administrative Rule (Minn. Rule) 7007.0150 and 7007.0200.

27. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including revisions to the plan promulgated in part 52 of this chapter . . ." *See also* Minn.Rule 7007.0100 subpt. 7.

28. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also* Minn. Rule 7007.0150 and 7007.0200.

29. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also* Minn. Rules 7007.0500, 7007.0600 and 7007.0800.

30. 40 C.F.R. § 70.5(b) provides that "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also* Minn. Rule 7007.0600 subpt. 2.

31. EPA promulgated full approval of Minnesota's Title V program on December 4, 2001. *See* 40 C.F.R. Part 70, Appendix A. Minnesota's Title V program became effective December 1, 2001. 66 Fed. Reg. 62967.

32. The Minnesota regulations governing the Title V (Part 70) permitting program are codified at Minnesota Administrative Rules Chapter 7007 and are federally enforceable pursuant to Section 113(a)(3) of the CAA.

33. Minn. Rule 7007.0150 provides that no person may operate an emissions unit or stationary source “except in compliance with an air emission permit from the Agency.”

34. Minn. Rule 7007.0200 provides that a major stationary source that has the potential to emit or emits more than 100 tons per year of any air pollutant must obtain a Part 70 permit.

35. Minn. Rule 7007.0800 specifies permit content and provides that the Part 70 permit “shall include emissions limitations, operational requirements, and other provisions needed to ensure compliance with all applicable requirements at the time of permit issuance.”

36. Minn. Rule 7007.0600 subpart 2 provides that “any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for a permit or permit amendment shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.”

FACTUAL BACKGROUND

37. Xcel Energy, Inc. is incorporated in Minnesota.

38. Northern States Power Company – Minnesota is incorporated in Minnesota and is a wholly owned subsidiary of Xcel Energy, Inc.

39. Xcel is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

40. At all times relevant to this Notice, Xcel has been and is an owner/co-owner and/or operator of the Sherburne County and Black Dog Generating Stations located in Minnesota.

41. During all times relevant to this Notice, the Sherburne County and Black Dog Generating Stations were located in areas classified as attainment for PM (as total suspended particulates (TSP) and/or particles with an aerodynamic diameter less than or equal to a nominal 10 microns (PM₁₀)), SO₂, NO₂ and ozone. 81 C.F.R. § 81.324.

42. The Sherburne County Generating Station (SherCo) is a fossil fuel-fired electric utility steam generating station located in Becker, Minnesota, in Sherburne County; and has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM. The Station consists of the following coal-fired boilers for electric generation with total generating capacity of 2,400 megawatts net (MW_{net}), each of which has a heat

input greater than 250 million BTU/hour: SherCo Unit 1 began operating in 1976; Unit 2 in 1977; and Unit 3 in 1987.

43. The SherCo Station is a “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour” and has the potential to emit more than 100 tons per year of pollutants regulated under the Act. Therefore, the Station constitutes a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a) and Section 501(2) of the Act; and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

44. In or about 2005 through 2006, physical changes or changes in the method of operation were made at the SherCo Station. These changes include, but are not limited to, the projects listed in Confidential Appendices A and B.

45. The Black Dog Generating Station is a fossil fuel-fired electric utility steam generating plant located near Burnsville, Minnesota, in Dakota County; and has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM. The Station consists of the following coal-fired boilers for electric generation, each of which has a heat input greater than 250 million BTU/hour and a total generating capacity of 278 MW_{net}: Black Dog Unit 3 began operating in 1955 and Unit 4 in 1960.

46. The Black Dog Station is a “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour” and has the potential to emit more than 100 tons per year of pollutants regulated under the Act. Therefore, the Black Dog Station constitutes a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a) and Section 501(2) of the Act; and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

47. In or about 2003 and 2004, physical changes or changes in the method of operation were made at the Black Dog Station. These changes include, but are not limited to, the projects listed in Confidential Appendix A.

NOTICE AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Provisions

48. The projects referenced in paragraphs 44 and 47, above, each caused a significant net emissions increase, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i), of SO₂, NO_x, PM and/or PM₁₀.

49. The projects referenced in paragraphs 44 and 47, above, each constituted a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

50. For the modifications identified in Appendices A and B (paragraphs 44 and 47, above), Xcel failed to apply for or obtain a PSD permit prior to commencing construction as required by 40 C.F.R. § 52.21(a)(2)(iii).

51. Xcel violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(a)(2)(iii) by constructing major modifications to existing major sources at the above-listed facilities without applying for or obtaining PSD permits and continuing to operate the modified facilities without applying for and obtaining a PSD permit. Xcel did not install BACT prior to commencing construction of such activities and continues to operate without BACT. Xcel violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21 by failing to install and operate BACT.

52. Each of the violations exists from the date of the start of construction of each modification and continues until the appropriate PSD permit is obtained and the necessary pollution control equipment is installed and operated.

Violations of the Title V Provisions

53. Since October 2003, Xcel has failed to submit timely, accurate and complete Title V permit applications for the SherCo and Black Dog Generating Stations with information pertaining to the modifications identified in Appendices A and B, and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT for NO_x, SO₂ and/or PM at the facilities. Xcel also failed to supplement or correct the Title V permit applications for these facilities in violation of Sections 502 and 503 of the Act, 42 U.S.C. §§ 7661a and 7661b; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§70.1(b), 70.5(a), (b) and (c), and 70.7(b), and Minnesota's Title V permit program at Minn. Rule 7007.

ENFORCEMENT

54. Section 113(a) (1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may issue an order requiring compliance, issue an administrative civil penalty order, or bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a) or the Minnesota SIP; Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder.

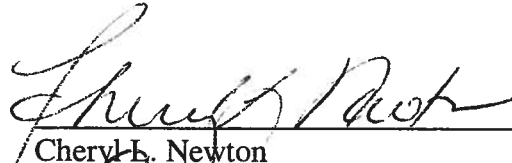
55. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or assess a civil penalty of up to \$27,500 per day for each such violation occurring on or after January 31, 1997, and up to and including March 15, 2004; and up to \$32,500 per day for each such violation occurring on or after March 16, 2004, through January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4 and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated,

or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

56. Section 167 of the Act, 42 U.S.C. § 7477 authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

Dated: _____

6/14/11


Cheryl L. Newton
Director
Air and Radiation Division